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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,618	07/18/2003	Raymond E. Umbaugh JR.		2901
23121	7590	04/06/2005	EXAMINER	
THE LAW FIRM OF HARRIS & BURDICK HAROLD BURDICK AND ROBERT HARRIS 6676 GUNPARK DRIVE SUITE E BOULDER, CO 80301			PARSLEY, DAVID J	
		ART UNIT		PAPER NUMBER
		3643		
DATE MAILED: 04/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/621,618	UMBAUGH, RAYMOND E.	
	<b>Examiner</b> David J Parsley	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 06 January 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-20 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 18 July 2003 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

**Detailed Action**

***Amendment***

1. This office action is in response to applicant's amendment dated 1-6-05 and this action is final.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-7, 9-11, 13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by JP Pat. No. 4-88928.

Referring to claims 1-2, 9 and 15, the Japanese patent discloses a seed germination and plant supporting utility comprising, a spacer – at the middle of items 1-2 as seen in figure 6, having a central opening therethrough between first and second sides of the spacer – see for example figure 6, and mesh – at 3-5, secured on both sides of the spacer – see figure 6, wherein the mesh is held spaced apart a selected distance by the spacer and enshrouds the central opening – see for example figure 6, the mesh having mesh openings of a size small enough to directly support a seed thereon – see figures 1-7 and the English abstract, at the first side of the spacer

and to be securely engaged by plant root growth therethrough at the second side of the spacer – see for example figures 1-7 and the English abstract. The Japanese patent further disclose a first retainer – at 1d,2c,5a,4a, associable with the spacer at one of the sides thereof for holding the mesh thereat with each of the retainers having an opening therethrough in correspondence with the spacer opening – see for example figure 6. The Japanese patent further disclose the first and second mesh each have a diameter greater than the inside diameter of the spacer ring and each positioned at a different of the ends of the spacer – see for example figures 4-6.

Referring to claim 3, the Japanese patent further disclose a second retainer –at 1d,2c,4a,5a, associable with the spacer at another of the sides thereof for holding the mesh thereat – see for example figure 6.

Referring to claims 6 and 17, the Japanese patent disclose the mesh at one of the sides of the spacer has a mesh size greater than the mesh size of the mesh at another of the sides of the spacer – see for example figures 4-6.

Referring to claim 7, the Japanese patent disclose the spacer includes first and second spacer components – see for example figure 6, each defining a part of the central opening – see for example figure 6, and with each having a different one of the sides of the spacer thereat, the first and second spacer components each having an interfacing surface configured to abut one another and surrounding the central opening spaced from the different one of the sides thereof – see for example proximate 1-2 in figure 6 of the Japanese patent, the mesh being maintained between the interface surfaces – see for example figures 4-6.

Referring to claims 10 and 18, the Japanese patent further disclose a second spacer – at 1-2, having a passageway therethrough between first and second ends of the second spacer, a third

mesh swath –at 3-5, positioned at the first end of the second spacer and a third retainer – at 1d,2c,4a,5a, associable with the second spacer at the first end thereof adjacent to the third mesh swathe thereat, the third retainer having an opening therethrough in correspondence with the second spacer passageway when configured to be associable with both the first and second spacers at the second ends thereof – see for example figures 4-6.

Referring to claim 11, the Japanese patent further disclose the first and third retainers each include a retaining lip adjacent to the openings therethrough configured to abut the first ends of the first and second spacers respectively to thereby anchor the first and third mesh swathes – see for example figures 4-6.

Referring to claims 13 and 16, the Japanese patent further disclose the first and second retainers each include a retaining lip – see figure 6, adjacent to the opening therethrough configured to abut a respective one of the first and second ends of the first spacer when associated therewith to thereby anchor the first and second mesh swathes positioned thereat – see for example figure 6.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent as applied to claim 1 above, and further in view of U.S. Patent No. 4,057,930 to Barham.

Referring to claim 4, the Japanese patent further discloses the spacer is ring shaped – see for example figures 6-7, having an inside diameter and an outside diameter – see for example figures 6-7, wherein the mesh includes first and second swathes – see 3-5 in figure 6, each with a diameter greater than the inside diameter of the spacer and each positioned at a different one of the sides of the spacer – see for example figure 6. The Japanese patent does not disclose the mesh swathes are fiber. Barham does disclose fiber mesh – at 13 – see for example column 4 lines 60-65. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent and add the fiber mesh of Barham, so as to allow for the mesh to not corrode during use.

Referring to claim 5, the Japanese patent as modified by Barham further discloses first and second removable retainer rings – at 1d,2c,5a,4a each receivable over a different one of the sides of the spacer holding the mesh thereat – see for example figures 6-7 of the Japanese patent.

Claims 8, 12, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent as applied to claims 1, 9, 13 or 15 above, and further in view of U.S. Patent No. 5,225,342 to Farrell.

Referring to claims 8, 12 and 19, the Japanese patent does not disclose a maintenance platform having an opening therethrough for receiving and locating the spacer and the mesh when assembled, the first retainer comprising a resilient yet deformable material configured to be securely receivable in the opening through the maintenance platform. Farrell does disclose a maintenance platform – at 202-212, having an opening therethrough for receiving and locating

the spacer and the mesh when assembled, the first retainer comprising a resilient yet deformable material configured to be securely receivable in the opening through the maintenance platform – see for example figures 7a-7c, and the second retainer comprising a lip – proximate 323,330, at the opening through the maintenance platform – see for example figures 7a-7c. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent and add the maintenance platform of Farrell, so as to allow for the user to easily replace components, remove the seeds and clean the device.

Referring to claim 14, the Japanese patent further discloses the spacer is ring shaped – see at 1-2 in figure 6. The Japanese patent does not disclose each of the first and second retainers are defined by a ring shaped body configured to be fit over a respective one of the first spacer ends, the retainer lip extending annularly from one end of the ring shaped body inwardly at the opening therethrough. Farrell discloses the spacer is ring shaped – see figures 7a-7c, and wherein each of the first and second retainers are defined by a ring shaped body configured to be fit over a respective one of the first spacer ends the retaining lip – proximate 272 and 274 and 264, extending annularly from one end of the ring shaped body inwardly at the opening therethrough – see for example figures 7a-7c. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent and add the first and second retainers of Farrell, so as to allow for the components of the device to be securely held together.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent as modified by Farrell as applied to claim 19 above, and further in view of EP Patent No. 0052264. The Japanese patent as modified by Farrell does not disclose a containment and feeding apparatus and a positioning structure, the positioning structure having stations

configured to receive the maintenance platform with the openings through the platform exposed from both above and below the platform and the positioning structure, the positioning structure configured to be received at the containment and feeding apparatus with the openings through the platform exposed from below to operations of the containment and feeding apparatus. The European patent does disclose a containment and feeding apparatus – at 1, and a positioning structure – at 3 – see figures 1-2, the positioning structure having stations configured to receive the maintenance platform – at 2, with the openings through the platform exposed from both above and below the platform and the positioning structure, the positioning structure configured to be received at the containment and feeding apparatus with the openings through the platform exposed from below to operations of the containment and feeding apparatus – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent as modified by Farrell and add the containment and feeding apparatus of the European patent, so as to allow for the device to propagate plant growth inside the device.

#### *Response to Arguments*

4. Regarding claims 1, 9 and 15, the Japanese patent JP 4-88928 does disclose a mesh – at 3-5, on both ends of the spacer elements – at 1-2, when multiple devices – at 1-2 are stacked upon one another as seen in figure 6. When multiple devices 1-2 are stacked as seen in figure 6, there is a mesh device – at 3-5 attached at the bottom of each device at 1-2 and another mesh

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device – at 3-5, attached at the top of the devices – at 1-2, from the device – at 1-2, attached at the top of another associated device at 1-2 as seen in figure 6.

Further, applicant argues that there is no securement of each of the members – at 1-2 to each other as seen in figure 6 of the Japanese patent. However, as seen in figure 6 each of the devices – at 1-2, is secured/attached to each other – at 1d-2c as seen in figure 6.

Further, the Japanese patent further discloses the mesh sizes as claimed as seen in the English abstract and figures 6-7, where seeds are disclosed as being placed on the mesh and then a nutrient is added to the seeds and therefore the seeds will sprout and roots will grow and then extend through the openings of the mesh in that the mesh is below the seeds and the openings of the mesh being the only place for the roots to go during the sprouting of the seeds.

### *Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David Parsley  
Patent Examiner  
Art Unit 3643

  
PETER M. POON  
SUPERVISORY PATENT EXAMINER

3/29/05